



## Statement on the Civil Liberties Implications of Official English Legislation before the United States Senate Committee on Governmental Affairs, December 6, 1995

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify before you today on behalf of the American Civil Liberties Union (ACLU). The ACLU is a membership-based nonprofit organization representing more than 275,000 members dedicated to preserving civil rights and liberties protected under our Constitution. Since our founding seventy-five years ago, the ACLU has defended the rights of all, particularly unpopular and disenfranchised groups, against unconstitutional discrimination and restrictions on their liberties. Early in our history, the ACLU represented immigrant workers deported and imprisoned because of their political beliefs. We have long been active in protecting racial minorities from discrimination in connection with their right to vote, to participate in the political process, to obtain equal education and opportunity, and to obtain equal access to important governmental services and benefits.

The ACLU believes that English Only laws—laws such as S.356 that make English the “official” language of government—and particularly those which broadly restrict the government’s ability to use languages other than English in communicating and delivering services to non-English-speaking Americans, violate civil rights and liberties. They do so in three ways.

First, by restricting the government’s ability to communicate with and provide services to non-English-speaking Americans, many of whom are children and elderly citizens, English Only laws deny fair and equal access to government. These limits, especially as they apply to such rights and services as voting assistance, education in a comprehensible language, health services and information, financial assistance such as social security, and police protection, infringe upon important and fundamental rights.

Second, by prohibiting the government from communicating with its citizens in any language other than English, English Only laws violate the First Amendment rights of elected officials and public employees. They also impair the First Amendment rights of limited-English-proficient residents to receive vital information and to petition the government for redress of grievances.

Third, English Only laws are based on assumptions predicated on false and disparaging stereotypes about today’s immigrants. Thus they foster anti-immigrant bigotry and intolerance and exacerbate ethnic tensions.

English Only laws are unnecessary, patronizing, and divisive. They run contrary to the spirit of tolerance and respect of diversity embodied in our Constitution.

### Official English Laws Are Unnecessary

Laws declaring English the “official” language of government are entirely unnecessary. Since the founding of our nation, America has been linguistically diverse. There have been hundreds of Native American and African languages, and a substantial population of Spanish speakers in Florida, Texas, California, and the Southwest, French speakers in Louisiana and New England, German speakers in Pennsylvania, Dutch speakers in New York, and Swedish speakers in Delaware (Marshall 1986, 9). Yet the primacy of English as America’s common language has never been in jeopardy.

Nor is it in jeopardy now. U.S. English, the largest organization dedicated to the establishment of English Only laws since 1983, concedes that 97 percent of Americans already speak En-

glish. According to the 1990 census, 13.5 percent of Americans over the age of five speak a language other than English at home. Of that 13.5 percent, 7.8 percent speak English "very well," and another 3.2 percent speak English "well." Only 2.9 percent reported that they spoke English either "not very well" or "not at all" (U.S. Bureau of Census 1989, 1990). Even within the largest single language minority, Spanish speakers, approximately 80 percent speak English (U.S. Bureau of the Census 1993). Just as significant, studies show that today's immigrants are learning English as fast as the immigrants of prior years. For instance, half of all recent Mexican immigrants in California already speak English. Among first-generation Mexican Americans, 95 percent are proficient in English; for second-generation Mexican Americans, the transformation is even more dramatic—more than 50 percent have lost their mother tongue (McCarthy and Valdez 1985). The rate of language assimilation among language minorities is just as rapid as in previous generations (Siobhan and Valdivieso 1988, i-x). A recent study examining English acquisition of immigrants found that, whereas approximately slightly more than 30 percent of five- to fourteen-year-old Latino immigrants spoke English very well in 1980, 70 percent spoke English very well ten years later in 1990. For Asian immigrants in the same group, the percentage went from a little over 40 percent to over 80 percent during that ten-year period (Myers 1995).

Official English laws are not needed to teach immigrants the importance of learning English. Immigrants more than any other Americans fully appreciate the importance of learning English. Each day they must negotiate the hardships of surviving in a society that is largely monolingual English, whether looking for a job; trying to get information about their children's school; communicating with health providers, law enforcement officers, or bus drivers; or even buying groceries or clothing. One need only look to the tens of thousands of immigrants waiting to get into adult English classes in Los Angeles and New York in order to understand their appreciation for the importance of learning English (Bliss 1988; New York Immigration Coalition 1994, 4; Woo 1986, 1). Indeed, in 1987 immigrants filed a lawsuit in Los Angeles Superior Court to force the county to expand English classes for non-English-speaking immigrants (*Perez et al. v. Los*

*Angeles Unified School Dist. et al.* 1987). And immigrant parents know very well that their children cannot fully participate in the economic mainstream of the United States without becoming proficient in English. That is why a survey taken in Florida in 1985 revealed that 98 percent of Latinos, as compared to 94 percent of White and Black parents, felt it was essential that their children read and write English "perfectly" ("New Miami Survey" 1985). Immigrants do not need a patronizing proclamation about English by Congress. What immigrants need are English classes. Ironically, "Official" English proposals do nothing to increase the resources needed to provide English instruction.

Nor are English Only laws needed to stem excessive bilingualism in government operations, as claimed by English Only proponents. In a study done by the Government Accounting Office (GAO) at the request of Senator Richard C. Shelby (R-AL) and Representatives William F. Clinger (R-PA) and Bill Emerson (R-MO), the GAO found that for the five-year period from 1990 through 1994, of the 400,000 documents printed by the federal government, only 265, or .065 percent, were printed in languages other than English (Bowling 1995).

If anything, despite forward-looking efforts to provide minimal language assistance to non-English-speakers through bilingual education and the Voting Rights Act, language minorities are vastly underserved. Even in California, which has the most comprehensive set of laws in the nation aimed at providing language assistance through governmental agencies (Crawford 1992a, 303-11), it is not uncommon for a Vietnamese cancer patient to wait for hours in a Bay Area county hospital waiting room until a translator is available (Chin 1991), for the five-year-old son of a Chinese-speaking couple to choke and lapse into a coma because emergency dispatchers could not understand their calls for help (Farrell 1987), for Latino earthquake victims to receive no assistance from relief workers who do not speak Spanish (Rojas and Asimov 1994), for a Cuban immigrant to be shot and killed by the police because no officer was available to command him to stop in Spanish (Coughalay 1989), for Spanish-speaking workers to be disproportionately injured by workplace toxic hazards because of the lack of Spanish-speaking OSHA inspectors and doctors, or warnings posted in Spanish (Freed

1993, 1), or for more than 50 percent of limited-English-proficient (LEP) students in California to receive no instruction in their native language (Macias 1995, 1). The harsh reality is that language minorities remain underserved, and the national resources devoted to foreign-language assistance, particularly outside of public education, are relatively minuscule.<sup>1</sup>

What few services and publications are provided in multiple languages make government more efficient, not less efficient as English Only proponents contend. Barring the government from choosing in specific circumstances to communicate with its non-English-speaking citizenry in languages comprehensible to these communities will result in miscommunications and hinder the implementation of governmental policies such as protecting public health (through multilingual notices, counseling, and so forth), enhancing water and resource conservation (through foreign-language bulletins and educational pamphlets), increasing tax collections (by use of bilingual service representatives and tax forms), and ensuring law compliance (by providing bilingual investigators; interpreters in administrative and criminal proceedings; translations of compliance bulletins issued by OSHA, EPA, Department of Commerce, etc.). For instance, the *Wall Street Journal* recently reported on the influx of immigrants to the prairie town of Worthington, Minnesota. Ethnic tensions over complaints that Vietnamese immigrant fishermen were overfishing the lake were diffused when local fishermen translated state fishing regulations into Vietnamese. The town then decided to prepare Laotian-, Vietnamese-, and Spanish-language videos on topics such as recycling that are foreign to newcomers (Kaufman 1995). It makes no sense to have a sweeping rule requiring English Only that straightjackets executive agencies and other governmental bodies from making particularized judgments about the need to use languages in addition to English under appropriate circumstances. Indeed, a recent decision by the Court of Appeals for the Ninth Circuit striking down Arizona's Official English law, the court found that the government's use of languages other than English in communicating with LEP residents increased rather than decreased efficiency, and that a law broadly prohibiting the use of different languages served no significant governmental interest (*Yniguez v. Arizonans for Official-English* 1995).

### Official English Laws Deny Important and Fundamental Services to Language Minorities

The actual effect of English Only laws on the provision of services depends on their text. Most of the laws which have been passed at the state and local levels, as well as the federal proposals pending in Congress such as S. 356, contain broad and ambiguous terms. For instance, what does it mean for the government to have "an affirmative obligation to preserve and enhance the role of English as the official language" of government (H.R. 123; S. 356.)? What is the scope of the injunction that "[t]he Government shall conduct its official business in English"? This wording is ambiguous even about whether the supplementary use of other languages in addition to English is permitted in official communications. For example, the California attorney general has interpreted California's 1986 Official English law as merely requiring that official governmental acts be conducted at least in English (Shimomura 1987). Do these provisions mean that a social security counselor cannot convey important information to a Chinese-speaking applicant or recipient otherwise entitled to benefits? Would they overturn existing requirements that federally funded migrant and community health centers and alcohol abuse and treatment programs provide language assistance where there are a substantial number of non-English-speakers (see H.R. 123, §175)? Do these provisions bar a member of congress from communicating with his or her constituents in Spanish, Russian, or Navajo? Do they prohibit the Immigration and Naturalization Service (INS) from employing interpreters to interview asylum applicants, speak with witnesses in an investigation, or translate in deportation proceedings? (Interpreters are used in the physical and mental examination of alien immigrants who want to enter the United States.) Would the Environmental Protection Agency (EPA) be barred from issuing or requiring the issuance of a Spanish-language summary of an environmental impact report on a proposed toxic waste site where the affected residents are primarily Spanish-speaking migrant workers? Will these laws affect the issuance of Federal Communications Commission (FCC) licenses to foreign-language television and radio broadcast stations? (It should be noted here that the largest orga-

nized proponent of English Only laws, U.S. English, has in the past opposed FCC licensing of Spanish-language stations [Crawford 1992b, 201-2].) Significantly, the definition of "official business" contained in S. 356 does not except "actions or documents that are primarily informational or educational," as had section 175. And the exception for "actions or documents that protect the public health" contained in S. 356 remains ill defined. Is providing individualized drug rehabilitation or rape counseling in Spanish or Chinese protective of "public" health? What is the line between public and private health?

Moreover, S. 356 does not appear to restrict only government conduct; it restricts "services, assistance, or facilities, directly or indirectly provided by the Government" (§163(b) [emphasis added]). Does this provision mean that services provided in Spanish or Russian by a private entity under a federal contract that receives federal monies would violate this provision? Would it mean that all state and local governments which receive federal money could not engage in foreign-language assistance to LEP residents? Would a city or county receiving federal funds be prevented from hiring bilingual police officers, social workers, or counselors? Would this law bar local school districts from providing bilingual education?

The potential mischief of Official English laws cannot be overestimated. At the very least, S. 356 would open up a Pandora's box of endless litigation on these and other issues, including the constitutionality of the law itself. More important, S. 356 and laws like it can cause substantial and concrete harm. Other English Only laws have been interpreted to impose severe restrictions on the use of languages other than English by government and its employees and officials. The first of such laws passed in recent times was enacted by Dade County, Florida, in 1980. Its effect was to bar distribution of bilingual materials on fire prevention; to stop the publication of MetroRail schedules in foreign languages; to ban Spanish-language consumer information and prenatal advice by the county hospital in Creole; and to discontinue funding for ethnic festivals (Castro, Haun, and Roca 1990, 156; Crawford 1992b, 108-9; also Dade County 1990). An Official English constitutional initiative passed by 51 percent of Arizona voters in 1988 has been held to bar legislatures from

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communicating with constituents in Spanish or Navajo, and bar public employees generally from communicating with the public in a language other than English (Yriguez v. Mofford 1990).

Some current congressional proposals are explicit about the termination of specific language-assistance programs. H.R. 739, for instance, would expressly require that "[c]ommunications by officers and employees of the Government of the United States with United States citizens shall be in English" and repeal provisions of the Elementary and Secondary Education Act of 1965 and the Voting Rights Act of 1965, which provide for bilingual education and voting assistance. H.R. 1005 requires the federal government "to conduct its official business in English, including publications, income tax forms and informational materials." And as mentioned above, S. 356 contains no exception for informational or educational materials.

English Only laws which ban the provision of governmental services to non-English-speakers unjustly target and disenfranchise language minorities. Such deliberate withdrawal of and ban on services to this already disadvantaged and insular sector of the American public is callous and mean-spirited. It is also unconstitutional. Moreover, by discriminating against language minorities, English Only laws contravene international standards of human rights as well. The Universal Declaration of Human Rights, which interprets the United Nations Charter, specifically bans discrimination on the basis of language as well as race, sex, and religion (Charter of the United Nations 1948). The International Covenant on Civil and Political Rights, to which the United States is a signatory, also expressly bans language discrimination (see articles 26, 27).

#### *The Right to Vote*

The right to vote is a fundamental and inalienable constitutional right (*Reynolds v. Sims* 1964; *Dunn v. Blumstein* 1972). Laws and devices, such as literacy tests, that were designed to impose burdens on minority groups in the exercise of their franchise violate that right (*Louisiana v. United States* 1965; *United States v. Mississippi* 1965; *Alabama v. United States* 1962; *Snell v. Davis* 1949; *South Carolina v. Katzenbach* 1966). A broad ban requir-

ing the withdrawal of bilingual assistance to LEP citizens (many of whom are elderly and have limited English-speaking proficiency, but whose English-reading ability is insufficient to comprehend complex and lengthy ballots and voting materials) imposes such a burden (Loo 1985). That burden will fall most heavily on older Americans, who are the least likely to learn English as a second language, and who also have the greatest need for bilingual assistance (Veltman 1988).<sup>2</sup> The injurious impact of such a ban on ethnic minority bilingual voters cannot be overstated. A 1982 study for the Mexican American Legal Defense and Educational Fund found that 70 percent of monolingual Spanish-speaking citizens would be less likely to register to vote if bilingual assistance were eliminated. If bilingual ballots were unavailable, 72 percent of the monolingual Spanish speakers would be less likely to cast a vote (Britschetto 1982, 68, 100). S. 356 does not exempt voting assistance from its broad injunction that the government conduct its official business in English.

## Education

Although not currently recognized as a "fundamental" constitutional right (*San Antonio Independent School District v. Rodriguez* 1973), education is nonetheless an important right affecting the futures and destinies of millions of schoolchildren (*Plyler v. Doe* 1982). As the Supreme Court stated in *Brown v. Board of Education* (1954) forty years ago:

Today, education is perhaps the most important function of state and local Governments. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The purpose of bilingual education is to serve children who do not yet speak English in a language comprehensible to them during the period in which they are learning English. Denying these children this meaningful form of education amounts to denying them an equal educational opportunity (*Lau v. Nichols* 1974). In

*Statement on the Civil Liberties Implications of Official English* holding that the failure to provide language assistance to non-English-speaking immigrant students violates Title VI of the Civil Rights Act of 1964, the Supreme Court stated:

[T]here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. (414 U.S. 566)

While there has been a longstanding debate about the effectiveness of different pedagogical techniques, it would be premature and inappropriate to permit a politically driven agenda to end bilingual education.<sup>3</sup> S. 356 would permit the use of non-English languages for the "teaching of foreign languages" (§165) but says nothing about the use of native-language instruction in teaching immigrant students.

## Official English Laws Violate Equal Protection Principles

In addition to infringing on voting and educational rights, English Only laws which systematically limit the access of language minorities to governmental services are constitutionally suspect because (1) language discrimination is functionally equivalent to national origin discrimination, and (2) language minorities are a prime example of a "discrete and insular minority" (*United States v. Carolene Products Co* 1938) that deserves heightened judicial protection under the Equal Protection clause because language discrimination should be a quasi-suspect classification ("Quasi-Suspect Classes" 1981; *Olagues v. Russomiello* 1986/1987, in which bilingual voters requesting bilingual ballots have been held to be a suspect classification). Moreover, English Only laws which impose a sweeping ban on foreign-language assistance to language minorities constitute the *purposeful* disadvantaging of language minorities and are far more insidious than the mere failure to provide such assistance as a result of oversight or lack of funding. These laws disadvantage minorities "because of, not merely

in spite of" their limited English proficiency (*Personnel Administrator of Massachusetts v. Feeney* 1978).

### *Language Discrimination as an Aspect of National Origin Discrimination*

There is an obvious correlation between a language and its corresponding national origin group. The vast majority of non-English-speakers are national origin minorities (Estrada 1984, 379-83). Ninety-seven percent of those who usually speak Spanish are of Hispanic/Latino origin, and approximately 77 percent of Hispanic Americans speak Spanish. Similarly, a high correlation has been found between language and national origin among Asian Pacific Islanders (Gall and Gall 1993, 128). Moreover, language is the prime symbol of ethnicity and is a central aspect of the ethnic identity of national origin minorities (Fishman 1977, 23, 25-26). To many Americans, speech is a cultural indicator second in importance only to physical appearance (Conklin and Lourie 1983, 279). Language is often a proxy for race and ethnicity (*Gutierrez v. Municipal Court* 1988/1989; Califa 1989, 293). The Supreme Court recently observed: "It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis" (*Hernandez v. New York* 1991).<sup>4</sup> National origin discrimination, like race discrimination, is considered inherently suspect under Equal Protection principles (*Hernandez v. Texas*). Given the intimate and inextricable relationship between language and ethnicity, English Only laws which systematically and purposefully disenfranchise language minorities are therefore constitutionally suspect. This is particularly so given the fact that the negative images and arguments advanced by English Only supporters have at times been a thinly disguised attack on Hispanic/Latino immigrants in particular (Califa 1989, 334). It is no coincidence that blatant anti-Hispanic/Latino statements have been attributed to the founder of U.S. English, Dr. John Tanton (Crawford 1992, 171-7), or that a former chair of the organization has argued that "we have Hispanic politicians who have an unstated or hidden agenda to turn California into a bilingual, bicultural state" (Lindsey 1986, 1).

### *Language Minorities Are a Discrete and Insular Minority*

English Only laws are also constitutionally suspect because language minorities, as a class, are a discrete and insular minority "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process" (*San Antonio Independent School District v. Rodriguez* 1973).

Language minorities are also socioeconomically disadvantaged. Persons with limited English skills were more than two to three times more likely to have incomes below the poverty line to have had far fewer years of formal education, and to be more unemployed than their fluent English-speaking counterparts (U.S. Bureau of the Census 1980, 623-26, 627). They suffer discrimination in practically all aspects of life, ranging from the justice system, to education, to social welfare, to employment (see U.S. Commission on Civil Rights 1970, 66-74, on discrimination against Spanish speakers in contacts with police and courts; U.S. Commission on Civil Rights 1972, 13-20, on discrimination against Spanish speakers in education). *Lau v. Nichols* (1974) stated that "the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system, which denies them a meaningful opportunity to participate in the [English Only] educational program—all earmarks of the discrimination banned by [federal Title VI] regulations."

In another case, concerning the refusal of the California Department of Social Services to provide bilingual welfare termination notices to those known unable to read and understand English, similar conclusions were reached (*Guerrero v. Carleson* 1973/1974). The implications of language discrimination in the workplace where "speak English only" rules have been adopted, or where employers discriminate based on the employees' accent, have also been discussed ("English Only Rules" 1989, 387; Matsuda 1991, 1329).

As far as the language minorities' voting rights are concerned, Congress has expressly found



that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition, they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. (42 U.S.C. § 1973b(f)(1))<sup>5</sup>

In addition to voting discrimination, the political powerlessness of non-English-speakers is heightened by the simple fact that a disproportionate number of them are not citizens and cannot vote at all ("Official English" 1987, 1345, 1354).

Like other groups deemed to constitute a "suspect classification," language minorities have also been "subjected to a history of purposeful unequal treatment" (Rodriguez, *supra*, 411 U.S. at 28). Until the late 1800s, our nation had a tolerant policy toward linguistic diversity. Bilingualism in government and education was prevalent in many areas. The German language, for instance, was common in schools throughout the Midwest (Heath 1981, 12-14). But the influx of eastern and southern Europeans and Asians gave rise to nativist movements and restrictionist language laws in the late 1800s and early 1900s. The Federal Immigration Commission issued a report in 1911 contrasting the "old" and "new" immigrant. The report argued that the "old" immigrants had mingled quickly with native-born Americans and assimilated, while "new" immigrants from Italy, Russia, Hungary, and other countries were less intelligent, less willing to learn English, not assimilating, and criminally inclined (Leibowicz 1985, 519, 536-37).

In response, English-literacy requirements were erected as conditions for public employment, naturalization, immigration, and suffrage in order to "Americanize" these "new" immigrants and exclude those perceived to be lower class and "ignorant of our laws and language" (Leibowicz 1985, 533-39). The New York Constitution was amended to disenfranchise over one million Yiddish-speaking citizens by a Republican administration

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fearful of Jewish voters. The California Constitution was similarly amended to disenfranchise Chinese voters who were seen as a threat to the "purity of the ballot box" (*Castro v. California* 1970; Leibowicz 1969, 7, 34-35).

World War I gave rise to intense anti-German sentiment. A number of states, previously tolerant of bilingual schools, enacted extreme English Only laws. For instance, Nebraska and Ohio passed laws in 1919 and 1923 respectively prohibiting the teaching of German until the student passed the eighth grade. The Supreme Court in *Meyer v. Nebraska* (1923) ultimately held the Nebraska statute unconstitutional as a violation of due process.

Native Americans were also subject to federal English Only policies in the late 1800s and early 1900s. Native American children were separated from their families and forced to attend English-language boarding schools, where they were punished for speaking their native language<sup>6</sup> (Reyhner 1992, 41-47).

Thus English Only laws' discrimination and disenfranchisement of language minorities, a particularly vulnerable group, is profoundly unfair and constitutionally suspect. Moreover, to the extent that English Only laws restrict lower, more local levels of government from enacting laws, policies, and programs providing for bilingual services, these laws are unconstitutional for yet an additional reason. Such laws deny language minorities the ability to obtain favorable legislation from local political bodies and government agencies. For instance, under the Arizona Official English constitutional provision added by the voters in 1988, language minorities cannot obtain an ordinance written in their language from the local city council or a policy from the county department of social services, and this holds for bilingual forms, notices, and assistance as well. Indeed, language minorities cannot even seek from the Arizona legislature a statute requiring, funding, or even authorizing language assistance in matters such as voting, job training, or consumer fraud. In short, preemptive laws which disable state and local governments from deciding on their own to provide bilingual assistance (see, e.g., S. 356; H.R. 739, §167, which purports to preempt state and federal laws) exclude language minorities from equal participation in the normal political process and impose on them special burdens not

placed on other groups (such as veterans and the disabled) that are free to seek favorable legislation at the local level. Barring such a discrete minority from equal access to the political process violates equal protection (*Washington v. Seattle School Dist. No. 1* 1982; *Hunter v. Erickson* 1969).

### Official English Laws Violate the First Amendment

The prohibition in English Only proposals of the conduct of government business in any language other than English would bar communication between public employees and the public. The ban on informational materials in other languages significantly and affirmatively interferes with the ability of non-English-speaking Americans "to receive information and ideas," an interest protected by the First Amendment (*Virginia State v. Pharmacy v. Virginia Citizens Consumer Council* 1976). It also interferes with public employees' First Amendment interest in communicating with language-minority citizenry (*Yñiguez v. Arizona for Official-English* 1995). In the Yñiguez case, a state legislator and a public employee brought a lawsuit challenging an Arizona constitutional initiative which made English the "official" state language, and which required all public officials and employees to "act" only in English while performing government business. The legislator plaintiff was dismissed from the case on technical grounds. Before the passage of the law, the employee, a Latina employed by the Arizona Department of Administration who handled claims asserted against the state, had communicated in Spanish with monolingual Spanish-speaking claimants. The court found the provision facially invalid under the First Amendment, unconstitutionally restricting not only public employees' right to communicate with non-English-speaking members of the public, but also the right of elected officials to communicate with their constituents in Spanish, Navajo, or any other language.

Current congressional proposals make no exception for informational materials in languages other than English (e.g., S. 356; H.R. 123, 739, and 1005) and thus, like the Arizona initiative, could even prohibit elected officials from communicating with their non-English-speaking constituents. In the 1988 hear-

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ing before the House Committee on the Judiciary Subcommittee on Civil and Constitutional Rights on "Proposed Amendments to the Constitution to Establish English as the Official Language of the United States," Representative Stephen Solarz described the value of a Russian-language newsletter he sent out to the large community of émigrés from the Soviet Union in his district:

My purpose in sending this newsletter was fourfold: I wanted to extend a personal welcome to these special individuals who had endured so much adversity in their lives in their successful quest to find freedom and democracy in this country. Secondly, I sought to explain my positions on issues that are very important to this community—Soviet Jewry and U.S.-Soviet relations. Third, I wanted to share with my constituents a heartwarming story of a family reunification that I was fortunate enough to help facilitate with the help of several hundred Brooklyn junior high school students. Finally, I urged my constituents to contact my office if they wanted me to intercede on behalf of relatives still awaiting permission to emigrate from the Soviet Union.

Dozens of Soviet Jewish families responded to this newsletter. In their letters to me—most of them also written in Russian—I learned of many refusenik cases of which I was previously unaware. I was then able to contact Soviet officials in an effort to expedite their emigration requests. This was Congressman-constituent relations at its best. (Solarz 1988)

Enjoining elected government officials from communicating with their constituents in languages other than English would violate both the rights of elected officials under the First Amendment and the rights of constituents to receive important information, to communicate with elected officials, and to participate in the political process. In striking down a similar provision of the Arizona Constitution, Judge Brunetti stated:

Article XXVIII offends the First Amendment not merely because it attempts to regulate ordinary political speech, but because it attempts to manipulate the political process by regulating the speech of elected officials. Freedom of speech is the foundation of our democratic process, and the language restrictions of Article XXVIII stifle informative inquiry and advocacy by elected officials. By restricting the free communication of ideas between elected officials and the people they serve, Article XXVIII threat-



ens the very survival of our democratic society. (Yañez v. Arizans for Official English 1995, slip op. 12761-12762)

## Official English Laws Foster Bigotry and Intolerance

The English language issue is one which concerns all of us but why is it necessary to adopt a measure declaring English as the official language? Is there a pending threat to the English language and our national unity, or have many Americans simply grown intolerant of our multilingual immigrant citizenry?

SENATOR JOHN MCCAIN, before the American Bar Association, August 5, 1988

The answer, regrettably, is all too clear. Even if Official English laws did not ban the provision of particular services in languages other than English and were merely symbolic, the message underlying that symbolism is unmistakably pejorative of immigrants and a result of fear mongering. The critical question is why we now need a law declaring English the "official" language when we have lived without such a declaration for two hundred years. The answer invariably given by English Only proponents is that for the first time in U.S. history, the primacy of the English language—the purported common bond which holds this disparate society together—is being threatened by a new breed of immigrant, one who does not speak English, is not learning English the way previous immigrants did, and does not appreciate the importance of learning English. The following examples typify the rhetoric explaining the rationale for English Only laws:

1. I don't know about your forefathers, but when mine came to America, the first thing they did was learn English . . . .
2. Tragically, many immigrants these days refuse to learn English!
3. They never become productive members of the American society. They remain stuck in a linguistic and economic ghetto; many living off welfare and costing working Americans millions of tax dollars every year.
4. Incredibly, there is a radical movement in this country that not only promotes such irresponsible behavior, but actually wants to

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give foreign languages the same status as English—the so-called "bilingual" movement . . . .

5. The leaders of the bilingual movement reject the "melting pot" concept that integrated the millions of immigrants who came to America and, working as one people, built the greatest nation on earth.
6. They don't want foreign language groups to learn English and assimilate into American culture—but they're funded by your tax dollars at the federal, state and local level to promote their divisive programs.
7. As a result, they are slowly but surely driving a wedge between the English and non-English speaking members of our society. (Solicitation letter from Jim Horn on behalf of English First, emphasis in original).

In a similar vein, Mauro Mujica, chairman of the board and CEO of U.S. English Inc. since 1993, stated in an interview on national television that Official English laws are needed "because unfortunately we have self-appointed leaders of minorities in this country that are telling these people that they do not need to learn the language" (Mujica 1995).

The equation of bilingualism with un-Americanism is a more vicious version of the nativist sentiment expressed in Theodore Roosevelt's oft-quoted diatribe at the turn of the century, "We have room for but one language here and that is the English language, for we intend to see that the crucible turns our people out as American, of American nationality, and not as dwellers in a polyglot boarding house." It is also a reiteration of the Americanization movement, which culminated in the Federal Immigration Commission's report in 1911 contrasting the "old" and "new" immigrants, and which led to restrictionist language policies. These arguments are predicated on false and negative stereotypes of today's immigrants and are informed by inaccurate assumptions about the language policy of our government. They portray today's immigrants, largely Latino and Asian, as being more resistant to assimilation, less willing and able to learn English, and more of a threat to the primacy of the English language and to Americanization than European immigrants of past generations. Nothing could be further from the truth. As dis-

Indeed, America's own history dispels the notion that an "official" language is needed to preserve national unity. As noted previously, from the founding of this nation there have been substantial populations of speakers of languages other than English. Indeed, in the early 1800s a greater percentage of Americans spoke German than speak Spanish today (Castellanos 1992, 13, 17). Bilingual education in German and Yiddish was common throughout eastern cities and the Midwest. Official minutes of many town meetings in the Midwest were printed in German (Baron 1992, 40). The presence of language diversity and official bilingualism had no detrimental effect on the nation's social fabric.

A more recent example is New Mexico, with its historically large Spanish-speaking population and its proud history of tolerance and acceptance of Spanish heritage. New Mexico, which was officially bilingual, printed all government documents in English and Spanish. Far from ethnic balkanization, Hispanics/Latinos in New Mexico enjoy one of the highest rates of political participation and hence integration in the nation. For example, U.S. census numbers reveal that the voter turnout in 1992 among Hispanics/Latinos was 60 percent in New Mexico, compared to less than 50 percent in California, Texas, and Arizona.

Where social tensions have arisen over language conflicts, such tensions are the *manifestation*, not the *cause*, of underlying social problems. Historically, language often has been used as a tool of social and political subjugation. It is the suppression of native and ethnic minority languages by a dominant group that most often gives rise to ethnic conflicts, be it the "Russification" of Soviet ethnic minorities, Franco's attempt to suppress the language rights of Basques and Catalans, or South Africa's attempt to impose the Afrikaner language as the language of instruction in the schools of Soweto. Racial and ethnic hostility are fostered not by language diversity, but by the attempts of certain language groups to suppress the use of other languages in political and social discourse. Leibowicz (1985) points out that social divisiveness has arisen and been exacerbated during the periods of intolerance and xenophobia that led to attempts to restrict the rights of language minorities. Karst (1986) describes Americanization and Know-Nothing movements, and enactment of restrictionist legislation, such as literacy laws, aimed at "new"

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immigrants during the nineteenth and early twentieth centuries. Beardsmore and Willems (1986) explain how tensions in bilingual nations such as Belgium are due not to bilingualism *per se*, but rather to historical factors and the lack of equality afforded people of subordinate language groups (117, 120-21).

Most scholars agree that the conflict between French and English speakers in Canada, often cited by English Only proponents as the prime example of the supposed threat posed by multilingualism, is the "result of the withdrawal of, or the failure to recognize, language rights rather than the result of linguistic tolerance and generosity" (Maldoff 1986, 105-6). According to commentators, the Quebec separatist movement is a reaction to perceived economic, political, and cultural subordination. If anything, Canada's tension was not caused but was in fact alleviated (at least temporarily) by the recognition of French as a co-official language (Woolard 1986, 191-92). There are vast differences in the roles of language, religion, political memory, geographic mobility, politics, and founding myths that make the Canadian/Quebec situation completely different from that of the United States (see Leibowicz 1985, 532-33). One of the most significant differences is the degree of language integration within the two societies. Twenty years ago, the rate of French speakers' acquisition of English was so slight that native-born Spanish speakers in the Southwest were *thirty times* more likely than French-speaking Québécois to adopt English as their dominant language (Crawford 1992b, 236). Even today only 32 percent of French speakers in Quebec are bilingual in English (compared to 80 percent of Hispanic Americans) (Swardson 1995). Most important, contrary to the inflammatory rhetoric of English Only proponents, there is no political movement in the United States to replace English with Spanish as our official language, or to effect the secession of the Southwest from the United States.

The ACLU does not question the importance of having a common language; obviously, a common language (or set of languages) is necessary as a practical matter for government and society to function efficiently. But the predicate assumption of English Only proponents—that English is the "social glue" that holds our society together—is facile. The common bond that unites Americans of all backgrounds, origins, and languages is

our shared belief in and commitment to freedom, democracy, and liberty. That bond runs deeper than the English language.

Domestic tranquility is achieved not through coerced conformity but through tolerance and mutual respect. In this regard, Official English laws ignore the central teaching of the First Amendment. Many of the world's most virulent wars have been based on religious differences, yet, despite the diversity of religious faiths within the United States, our nation has avoided the intense heretical wars and violent theological conflicts experienced elsewhere. Why? Because the First Amendment guarantees tolerance and teaches mutual respect of different faiths rather than imposing an official orthodoxy. In contrast, Official English laws impose an official orthodoxy that breeds intolerance. It is intolerance, not diversity, which threatens our nation's unity.

## Conclusion

Official English laws are unnecessary. If passed, they will impose material hardships, violate constitutional rights, and exacerbate ethnic tensions. We should celebrate, not fear, our diversity. The rich tapestry of ethnicities and languages that comprise the United States is one of our greatest strengths. Official English laws reflect our worst fears, not our highest ideals. The ACLU urges this committee to reject Official English proposals as unwise, unfair, and unconstitutional.

## Notes

1. English Only proponents have contended that \$8 to \$10 billion is spent each year on bilingual education. That figure is unfounded, obtained by multiplying the number of LEP students by the total average spent on education per pupil. It ignores the fact that (a) only a small percentage of LEP students are in bilingual education programs, and (b) monies would have to be spent on these students even if there were no bilingual education. What is relevant is the *incremental* cost, if any, of bilingual education over and above the cost of alternative educational methods. At least one study by BW Associates in Berkeley, California, found no significant in-

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cremental costs of bilingual education. In any event, the more relevant figure is \$200 million, which is spent annually under Title VII of the Elementary and Secondary Education Act of 1965, 25 percent of which goes to non-bilingual education programs.

With respect to bilingual voting assistance, according to a 1984 GAO survey, 79 percent of 259 responding jurisdictions covered by the Voting Rights Act reported they incurred no costs in providing oral assistance; 101 of the responding jurisdictions that provided bilingual written assistance reported a cost totaling just \$388,000 for such assistance (U.S. General Accounting Office 1986).

2. Sociologist Calvin Velman (1988) found that approximately 80 percent of those aged fifteen to twenty-four at time of arrival will come to speak English on a regular basis. This figure declines inversely with the age of the immigrant at the time of arrival. Of those aged twenty-five to thirty-four at time of arrival, 70 percent will become regular English speakers. Twenty percent of those aged thirty-five to forty-four and 30 percent of those aged forty-five and over will come to speak English on a regular basis.

3. Most experts believe that bilingual education, properly administered, is an effective method of helping students make the transition to instruction in English (U.S. Government Accounting Office 1987; see also Crawford 1989). Indeed, the most comprehensive research on the subject indicates that the more extensive the instruction in the native language, the better the students perform in a variety of subjects, such as math and science, as well as English. The study indicates that students in longer-term bilingual education classes accelerate in their rate of educational growth faster than students in classes where no native-language instruction is used or where such instruction is ended quickly (Ramirez 1991; Asimov 1991).

Such a result should not be surprising. Native instruction allows students to keep up in math, science, and other courses while they learn English. Increasing proficiency in a child's native language increases his or her cognitive abilities and understanding of grammar and structure, thereby enhancing the ability to acquire a second language (English). Bilingual education also avoids the implied degradation of the child's native language and culture, which often accompanies traditional "sink or swim" methods; bilingual education thus fosters immigrant students' self-image and self-respect. As one federal court found:

When Spanish-surname children come to school and find that their language and culture are totally rejected and only English is acceptable, feelings of inadequacy and lowered self-esteem develop. . . . If a child can be made to feel worthwhile in school then he will learn even with a poor English program. (*Serra v. Portales Municipal Schools* 1974)

The claim that experience proves that the traditional "sink or swim" method works best since prior immigrants "made it" without bilingual education is without foundation. Although some immigrants succeeded, many more sank than swam. In 1911 the U.S. Immigration Service found that 77 percent of Italian, 60 percent of Russian Jewish, and 51 percent of German children of immigrant parents were one or more grade levels behind in school (Cohen 1970).

4. See also *Hernandez v. Texas* 1954: Spanish surnames "provide ready identification of the members of this [Mexican American] class"; *Castaneda v. Partida* 1977: Mexican American ethnicity is synonymous with "[p]ersons of Spanish language"; *Yu Cong Eng v. Trinidad* 1926: A Philippine ordinance requiring accounting records to be kept in only English, Spanish, or local dialect denied equal protection to Chinese merchants because it prohibited them from keeping records in their native language; *Lau v. Nichols* 1974: The failure of San Francisco public schools to provide educational services to non-English-speaking students constituted national origin discrimination, violating Title VI of the Civil Rights Act of 1964.

5. Voting discrimination against language minorities has injured Hispanics/Latinos in particular as well as other language minorities such as Asians and Native Americans. See, for instance, S. Rep. No. 295, 94th Cong., 1st Sess. 28-31, reprinted in 1975 U.S. Code Cong. & Admin. News 774, 794-97: Congressional finding that "language minority citizens [continue to be] excluded from the electoral process through the use of English Only elections," and that "[p]ersons of Spanish heritage was the group most severely affected by discriminatory [voting] practices, while the documentation concerning Asian Americans, American Indians and Alaskan Natives was substantial"; *Castro v. California* 1970: Concerned refusal to register as voters otherwise qualified Spanish speakers who could not prove and attest to literacy in English.

6. During slavery, African Americans were also subjected to restrictionist language policies. It was common practice for slave owners to mix up Africans of different tribes, limiting communication between slaves (Smitherman 1977, 7). Of course, it is well known that laws prohibited teaching slaves to read and write. Subsequent to emancipation, literacy laws were enacted to keep African Americans from voting (*Louisiana v. United States* 1965).

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#### Official English Bills in Congress

##### 105<sup>th</sup> Congress

- ◆ H.R. 123 (Cunningham)—“Bill Emerson English Language Empowerment Act”; the lead version of English Only legislation, 146 cosponsors; referred to Education and Workforce Committee.
- ◆ S. 323 (Shelby)—Similar to H.R. 123; 20 cosponsors; referred to Governmental Affairs Committee.
- ◆ H.R. 622 (Stump)—“Declaration of Official Language Act”; parallels H.R. 123 but with fewer exceptions to the English Only mandate; also would repeal the bilingual provisions of the Voting Rights Act; 36 cosponsors; referred to Education and Workforce and Judiciary committees.
- ◆ H.R. 1005 (King)—“National Language Act”; a more restrictive English Only measure that would repeal the Bilingual Education Act and make schools return unspent grant funds; 22 cosponsors; referred to Education and Workforce Committee.
- ◆ H.J. Res. 37 (Doolittle)—Constitutional English Language amendment; 3 cosponsors; referred to Judiciary Committee.
- ◆ H. Con. Res. 4 (Serrano)—English Plus resolution; a nonbinding policy statement in opposition to English Only measures; 37 cosponsors; referred to Education and Workforce Committee.

- ◆ H. Res. 28 (King)—Nonbinding resolution disapproving of the use of federal funds for school programs that recognize "Ebonics"; 7 cosponsors; referred to Education and Workforce Committee.
- ◆ H.R. 856 (Young)—Puerto Rico plebiscite bill includes Official-English provisions for statehood; 87 cosponsors; passed Resources Committee, 44-1, 5/21/97; discharged by Rules committee and placed on House calendar, 7/11/97.
- ◆ H.R. 1203 (Stump)—Prohibits the use of federal education funds to "promote the teaching or use of regional or group dialects"—e.g., African American Vernacular English; 128 cosponsors; referred to Education and Workforce Committee.

#### 104<sup>th</sup> Congress

- ◆ H.R. 123 (Emerson)—Federal English Only bill, passed by the House of Representatives, August 1, 1996.
- ◆ H.R. 739 (Roth)—"Declaration of Official Language Act"; a more draconian version of the Emerson bill.
- ◆ H.R. 1005 (King)—An even more restrictive "National Language Act."
- ◆ S. 356 (Shelby)—Companion to the Emerson bill; text is identical to H.R. 123, as originally introduced.

#### 102<sup>nd</sup> Congress

- ◆ H.R. 123 (Emerson)—First Version of "Language of Government" legislation, introduced January 3, 1991.

#### 97<sup>th</sup> Congress

- ◆ S.J. Res. 72 (Hayakawa)—A constitutional English Language Amendment; the first Official-English bill ever introduced in Congress, April 27, 1981.